

ESTATE OF C. WALTER KEASTER

IBLA 79-537

Decided May 21, 1980

Appeal from decision of Fairbanks, Alaska, District Management, cancelling grazing lease F-031631.

Affirmed.

1. Alaska: Grazing -- Grazing and Grazing Lands -- Grazing Leases: Cancellation or Reduction

Where BLM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, BLM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

APPEARANCES: Lyle R. Carlson, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On January 1, 1974, C. Walter Keaster, now deceased, entered into Alaska grazing livestock lease F-031631, pursuant to the Act of March 4, 1927, 44 Stat. 1452, 43 U.S.C. § 316 (1970). This lease was administered by the Fairbanks District Office, Bureau of Land Management (BLM). The lands covered by this lease were the subject of selection application F-027881, previously filed by the State of Alaska (the State) on May 25, 1961. Accordingly, BLM added the express condition to Keaster's lease that "[p]ending State Selection

application F-027781 will probably cause this BLM lease to be cancelled sometime during 1974 or 1975." On May 6, 1976, BLM granted tentative approval to this State selection application.

On May 25, 1979, BLM issued a decision cancelling this lease, under the authority of 43 CFR 4230, in which it explained that management of the lands had passed to the State following the May 6, 1976, decision granting tentative approval to the State's selection application. The Estate of C. Walter Keaster has appealed this decision.

[1] Under 43 CFR 4230.1, BLM has the discretionary authority to cancel Alaska grazing leases to permit utilization of lands for other purposes, provided that it is in the public interest to do so and that the lands are subject to such acquisition. BLM's tentative approval of the State's selection application is in consonance with the Federal Government's obligations under the Statehood Act and in the public interest. Appellant has not protested the propriety of this action or attempted to show that it is not in the public interest. There is nothing in the record indicating that these lands are not subject to State selection. Thus, BLM had the discretionary authority under 43 CFR 4230.1 1/ to cancel the lease.

BLM's decision to cancel this lease should come as no surprise, as BLM had expressly advised lessee in the terms of the lease in 1974 that it was subject to cancellation upon resolution of the State's selection application. Additionally, the record showed that lessee was warned explicitly by BLM prior to the renewal of his lease that it would have to be canceled when the State selection was approved. In fact, on April 5, 1974, lessee was advised that his lease would be canceled in 30 days. For reasons not apparent, this did not happen, and, as it turned out, appellant gained over 5 more years of use of the land for grazing. Thus, we perceive no inequity in BLM's action here.

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1/ This regulation in turn invokes 43 CFR 4220.7(e)(2), which reads as follows:

"(e) Rights reserved. Grazing leases under this part shall be subordinated to and shall be subject to modification or reduction by the manager to the extent necessary to permit:

\* \* \* \* \*

"(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses, pursuant to applicable public land laws, where the same are in the public interest or will not unduly interfere with the use of the area for grazing purposes."

The Alaska Statehood Act is an "applicable public land law" within the ambit of this regulation.

Appellant's argument that the lease may not be canceled in 1979, because the terms of the lease provide only for cancellation in 1974 or 1975 is unpersuasive. This term merely advised lessee of the likelihood that BLM would lose control of the land due to the State's selection. It is the power to cancel the lease under 43 CFR 4230.1, not the terms of the lease, which justifies BLM's action here. Even in the complete absence of an advisory provision of this type, BLM could still invoke this power of cancellation.

43 U.S.C. § 316(m) (1970), and the corresponding regulations, 43 CFR Subpart 4240, provide that a grazing lessee is entitled to apply for a hearing and that the Department may take no action until the lessee is notified that such action is proposed and that he has the opportunity to apply for a hearing. By letter dated December 4, 1979, this Board advised counsel for appellant of the right to request a hearing, but no application for such has been filed, nor has any response been received. We perceive no useful purpose to be served by our ordering a hearing sua sponte, as there are no disputed issues of fact to be resolved.

Appellant has advised that he is negotiating with the State of Alaska for continued recognition of his grazing privileges following passage of administration of these lands to the State. As the Department is entirely without jurisdiction to do so, we make no comment on this proposal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Frederick Fishman  
Administrative Judge

